

APPEAL NO. 022806
FILED DECEMBER 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 15, 2002. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable neck, low back, left thumb, left hip/thigh, and left knee injury on _____, and that she had disability from April 16, 2002, through the date of the hearing. In its appeal, the appellant (carrier) asserts error in the hearing officer's having excluded its Exhibit No. 4, a peer review report from Dr. K, and asks that the case be remanded for the hearing officer to consider that report in resolving the issues before her. In the alternative, the carrier contends that the hearing officer's injury and disability determinations are against the great weight of the evidence. In her response, the claimant urges affirmance.

DECISION

Affirmed.

Initially, we consider the carrier's assertion that the hearing officer abused her discretion in excluding the peer review report from Dr. K, which was not timely exchanged with the claimant. The carrier argues, on appeal, as it did at the hearing, that Dr. K's delay in preparing the report should not be held against the carrier and that it exchanged the report as soon as possible after it received the report. The hearing officer rejected that argument, noting that since Dr. K only conducted a peer review and did not exam the claimant, the carrier had ultimate control over when to request the report in order to ensure that it would be available to be timely exchanged with the claimant. Thus, she further determined that the carrier did not have good cause for its failure to timely exchange the report. We find no merit in the carrier's assertion that the hearing officer abused her discretion in so deciding. Thus, the hearing officer did not err in excluding Dr. K's report.

The hearing officer did not err in determining that the claimant sustained a compensable injury or in determining that the injury included the neck, low back, left thumb, left hip/thigh, and left knee. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was persuaded that the claimant sustained her burden of proving that she sustained a compensable injury and the nature and extent of that injury. The factors emphasized by the carrier in challenging the hearing officer's determination on appeal are the same factors it emphasized at the hearing. The significance, if any, of those factors was a matter for the hearing officer in making her credibility determinations. Nothing in our review of the

record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The success of the carrier's argument that the claimant did not have disability is dependent upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the determination that the claimant sustained a compensable injury on _____, we likewise affirm the determination that she had disability, as a result of her compensable injury, from April 16, 2002, through the date of the hearing.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRUCK INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

**FRED B. WERKENTHIN
100 CONGRESS AVENUE
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge